enforce a lien to secure ordinary debt. There are exceptional attachments in almost every state, but the statutes of all are general alike in recognition of this lien-creating remedy. Though there are distinctive features, there is a family likeness.

This prevalent system has no countenance whatever from the common law. As held over again and again in every state, it is repugnant to the common law. It is against natural right to give a creditor a lien of a contingent character, perfect it by judgment, and sell the debtor's property thereunder, to the exclusion of other creditors whose judgments may be older than his just because his lien obtained on his own oath, sworn *ex parte*, is older than their judgments. This remedy is not to be confounded with attachment as distraint or similar processes. How then can there be power in the court to grant this remedy, unless the conditions of its bestowal have been observed? If the common-law jurisdiction of a court over the defendant and the subject-matter of the controversy, renders attaching before judgment incidental in the sense that it is not an act requiring special authority, our system falls. If a superior court can obtain special jurisdiction by its own process when the defendant is not reached so as to be made a party, the same result is apparent. Safeguards against abuse of the salutary but dangerous remedy would be gone.

RUFUS WAPLES.
Ann Arbor, Mich.

RECENT AMERICAN DECISIONS.

Supreme Court of Illinois.

MAY *v.* FIRST NAT. BANK OF ATTLEBORO.

Under section 13 of the Illinois act in relation to assignments for the benefit of creditors, every provision in any assignment that provides for the payment of one debt in preference to another is void; and, as against creditors, whether resident in Illinois or a third state, attaching property in Illinois, belonging to a debtor residing in New York, such an assignment, executed in New York, is void, even if, by the laws of that state, it is valid, and although the attachment was made with actual notice of the prior assignment.

APPEAL from Appellate Court, First district.

Attachment.

James S. Norton, for May, assignee, etc., appellant.

Geo. L. Thatcher, for First Nat. Bank, etc., appellee.

SCOTT, C. J.—This suit was commenced in attachment by the First National Bank of Attleboro, Mass., against certain parties

doing business under the firm name of Halstead, Haines & Co. The attachment writ was levied upon real estate, alleged to belong to the attachment debtors, situated in the county of Cook. Judgment was rendered by default against the attachment defendants for $5150, with an order for a special execution. Afterwards, Lewis May, a citizen of New York, where defendants resided, by his interpleading, claimed to be the owner of the real estate levied upon, under and by virtue of an assignment by voluntary deed, made and delivered to him by the insolvent debtors, under and in conformity to the laws of New York relating to general assignments by debtors for the benefit of creditors. The deed of assignment purports to convey and transfer to the interpleading claimant, and his successors and assigns all and singular, the copartnership and individual estate of the grantors, real and personal, in trust, with power to convert the same and apply the proceeds as therein directed. It provides for the payment of partnership and individual debts in full, if the estate should be sufficient, otherwise *pro rata*, with preferences to employees and certain specified creditors. It is also averred the deed of assignment was acknowledged July 12th 1884, was duly recorded in the proper office in New York, where it was made, and was also recorded, July 28th 1884, in the recorder's office in Cook county in this state, where the lands involved are situated, and that the plaintiff in attachment had actual notice of the execution and delivery of the assignment deed prior to the commencement of this suit. To the plea of the claimant, stating these and other facts of less importance, the court sustained a demurrer, and the claimant not answering, further judgment was entered, dismissing his interplea out of court. The judgment was afterwards affirmed in the appellate court of the First district, and the claimant brings the case to this court on his further appeal.

As the case comes to this court, there can be and is no controversy concerning the material facts on which the questions of law arise. The attachment plaintiff is a corporation, existing under the laws of the state of Massachusetts. The justness of the claim against the attachment debtors is not called in question. The defendants in the attachment suit, and the interpleading claimant, all reside in the state of New York. The assignment deed was recorded in Cook county, where the lands in controversy are situated, before this suit was commenced, and the averment, which

the demurrer, of course, admits, is, the attachment plaintiff had actual notice of the assignment prior to the commencement of this suit. Under the facts as admitted, it is a question of law who shall have the proceeds of the sales of the attachment debtor's lands—the attaching plaintiff, on its claims against the debtors, or the intervening claimant, for the benefit of the debtor's creditors, to be distributed in New York under the deed of assignment according to its provisions. The exact question presented for decision on this record has not heretofore been passed upon by this court. Cases involving principles nearly analogous have been the subject of discussion. It must be borne in mind that the intervenor is not a purchaser for value. He only claims the property in trust for the benefit of the creditors of his assignors under the provisions of the deed of assignment, and not otherwise.

In *Heyer* v. *Alexander*, 108 Ill. 385, the property attached was claimed by the assignee of the attachment debtors, under a voluntary deed of assignment made in another state, and it was then ruled the estate "passed by the deed of assignment, subject to such restrictions as our laws may impose." It was said such a conveyance is only valid by the comity between the states, and the same comity, in some cases, imposes terms upon the conveyance for the protection of the inhabitants of the state where the property to be affected is situated. Accordingly, it was held the property attached was subject to the claims of the resident attachment creditors. The principle of that case may be reasonably extended so as to embrace one feature of the case being considered. It will be noticed the deed of assignment in this case gives preferences to employees and certain specified creditors. A statute of this state (sect. 13 of the act in relation to assignments for the benefit of creditors) makes every provision in any assignment that provides for the payment of one debt or liability in preference to another void. The policy of the law of this state would hardly warrant the courts in lending their aid to a foreign assignee to withdraw effects, either real or personal, from the just claims of creditors of the insolvent debtors, and remove the same to another state, where, under the laws of that state, such creditors might get no part of their claims on account of the preferences given by the deed of assignment. There is no comity existing between states as would require the courts of this state to sanction any policy that might result in such an inequitable distribution of the estates of insolvent debtors—certainly

not to the prejudice of creditors resident in this state. It is therefore quite plain, if the attaching creditor in this case was a citizen of this state, or a corporation existing under the laws of this state, it would be entitled to the property attached, as against the foreign assignee, who seeks to remove it to another state to be administered under the laws of such state. That our laws will not permit. As has been seen, the attaching creditor in this case is a corporation, existing under the laws of the state of Massachusetts, and the question arises, is there any reason for applying a different rule to it than would be applied to a creditor residing in this state? There is much reason for the doctrine that, when "once properly in court, and acknowledged as a suitor, neither the law, nor the courts administering the law, will admit any distinction between the citizen of one state and that of another." This court has distinctly recognised this principle in *Rhawn* v. *Pearce*, 110 Ill. 350. No reason is believed to exist for making any distinction between resident and non-resident creditors seeking the aid of our courts. They should, as a general rule, be admitted to the same rights under the law. Had this attaching creditor been a corporation, existing under the laws of New York, and located in that state, where their insolvent debtors reside, a very different question might be presented. In such cases the courts of this state might not be willing to lend their aid to such a creditor, to enable him to obtain an inequitable advantage over other creditors residing in the same state where the common fund is to be administered. That would be to assist one creditor to the injury of another. But no reason exists for denying a citizen of another state, owing no duty to observe the laws of the state under which the assignment was made, to become a suitor in the courts of this state, on terms of equality with our own citizens, and giving to him the same rights under the law as would be awarded to resident citizens. This would conform to the guaranty contained in the federal constitution that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states," and accords better with a sense of justice and right.

The judgment of the appellate court will be affirmed.

INVOLUNTARY ASSIGNMENTS.—Contrary to the English doctrine, the rule prevails generally in the United States, that an *involuntary* assignment of property in a foreign jurisdiction will not be recognised here for the purpose of defeating an attachment subsequently made. As regards this class of assignments, the states are treated as foreign to each other: *Ins. Co.* v. *Bank*, 68 Ill.

384; *Pierce* v. *O'Brien*, 129 Mass. 314; *May* v. *Wannemacher*, 111 Id. 202; *Taylor* v. *Columbian Ins. Co.*, 14 Allen 353; *Abraham v. Plestoro*, 3 Wend. 538; s. c. 1 Paige 236; *Willitts* v. *Waite*, 25 N. Y. 577; *Caskie* v. *Webster*, 2 Wall., Jr. 131.

This rule has been extended to attachments by citizens of the state where the assignment was made: *Rhawn* v. *Pearce*, 110 Ill. 350; *Hibernia Nat. Bank* v. *La Combe*, 84 N. Y. 367. But see, *Einer* v. *Beste*, 32 Mo. 240.

VOLUNTARY ASSIGNMENTS.—1. *Attachments by residents of the state where the assignment was made.* As against a subsequent attachment by a resident of the state where the assignment was made, the latter will generally be upheld: *Einer* v. *Beste*, 32 Mo. 240; *May* v. *Wannemacher*, 111 Mass. 202; *Richardson* v. *Forepaugh*, 7 Gray 546; *Whipple* v. *Thayer*, 16 Pick. 25; *Daniels* v. *Willard*, Id. 36; *Burlock* v. *Taylor*, Id. 335; *Hall* v. *Boardman*, 14 N. H. 38; *Kidder* v. *Tufts*, 48 Id. 121; *Hoag* v. *Hunt*, 21 Id. 106; *Bholen* v. *Cleveland*, 5 Mason 174; *Noble* v. *Smith*, 6 R. I. 446; *Hanford* v. *Paine*, 32 Vt. 442; *Mowry* v. *Crocker*, 6 Wis. 326. See also, *Weider* v. *Maddox*, 1 S. W. Rep. 168; s. c. 66 Tex.

The fact that the assignment contains preferences, valid where made, but forbidden by the laws of the state where the attachment is levied, will probably not change the rule, unless the effect of the statutory inhibition is to render void the assignment itself and not merely the preferences: *Moore* v. *Bonnell*, 31 N. J. L. 90; *Richardson* v. *Leavitt*, 1 La. Am. 430; *Thurston* v. *Rosenfield*, 42 Mo. 474.

But if the effect of the statutory provision against preferences is to avoid the assignment containing them, such an assignment will not be upheld against an attachment by a resident of the state where the assignment was made: *Stricker* v. *Tinkham*, 35 Ga. 176; *Mason* v. *Stricker*, 37 Id. 262; *Moore* v. *Church*, 30 N. W. Rep. 855; s. c. 70 Ia. ; *Loving* v. *Pairo*, 10 Id. 283, *contra*; *Butler* v. *Wendell*, 57 Mich. 72.

In a proper case an injunction may be granted to restrain a citizen from pursuing an attachment in another state after an assignment has been made: *De Hon* v. *Foster*, 4 Allen 545. But where the insolvency laws of the two states are conflicting, and a lien by attachment has been acquired, equity will not interfere: *Warner* v. *Jaffray*, 96 N. Y. 248; *Jenks* v. *Ludden*, 34 Minn. 482.

In *Paine* v. *Lester*, 44 Conn. 196, in sustaining an attachment against an assignment by a citizen of the state where the assignment was made, contrary to the general rule above stated the court said: "The citizens of all our sister states have, by the Constitution of the United States, the same privileges with our citizens, and any one of them who has availed himself of the legal remedies furnished by our laws, to secure payment of a debt due him, has the same claim to the assistance of our courts that one of our own citizens would have."

2. *Attachments by home creditors.* Where the laws of a state forbid preferences in general assignments for the benefit of creditors, a foreign assignment with preferences, though valid where made, will not be sustained against a subsequent attachment by a resident creditor: *Zipcey* v. *Thompson*, 1 Gray 243; *King* v. *Johnson*, 5 Har. (Del.) 31; *Guillander* v. *Howell*, 35 N. Y. 657; *Fuller* v. *Steiglitz*, 27 Ohio St. 355, 364; *Van Winkle* v. *Armstrong*, 5 Atl. Rep. 449; s. c. 49 N. J. L.

In *Bryan* v. *Brisbin*, 26 Mo. 423, the court said: "Under such an assignment [with preferences] here the title would pass but the provision for preferences would be totally disregarded. As the management of the funds under the assignment in Minnesota is entirely beyond the reach of our courts, it is plain that is must be regarded as practically

in conflict with our laws. * * * It is very obvious that if we hold the assignment to prevail over the attachment we make a discrimination against our own citizens."

But the authority of the above rule has been denied: *Atherton Co.* v. *Ives*, 20 Fed. Rep. (Ky.) 894; *Law* v. *Mills*, 18 Penn. St. 185. See *Philson* v. *Barnes*, 50 Id. 230.

Where foreign assignments have contained other provisions in conflict with the law of the place where the attachment was made, at the instance of a resident creditor, the latter has been sustained: *Schuler* v. *Israel*, 27 Fed. Rep. (Mo.) 851; *Pierce* v. *O'Brien*, 129 Mass. 314; *Faulkner* v. *Hyman*, 142 Id. 53; *Green* v. *Van Buskirk*, 7 Wall. 139.

In many cases attachments by resident creditors have been upheld against foreign assignments, though such assignments would have been good had they been made in the states where the attachments were levied. In *Heyer* v. *Alexander*, 108 Ill. 385, it was said: "The doctrine is that such a conveyance is subject to the claim of resident creditors where the property is located. This we regard as the true rule. It is not just or fair that creditors in this state should be compelled to go to a foreign state to receive a *pro rata* share of the debtor's property, when they perhaps extended credit alone upon the faith of the debtor's property in this state and to which they looked for payment." See also, *Ingraham* v. *Geyer*, 13 Mass. 146; *Osborn* v. *Adams*, 18 Pick. 245; *Full River Iron Works* v. *Croade*, 15 Id. 11: *Fox* v. *Adams*, 5 Greenl. 245; *Johnson* v. *Parker*, 4 Bush (Ky.) 149; *Chafee* v. *Fourth Nat. Bank*, 71 Me. 514; *Dunlap* v. *Rogers*, 47 N. H. 281.

On grounds of comity the contrary doctrine has been adopted by some courts: *Walters* v. *Whitlock*, 9 Fla. 86; *Askew* v. *La Cynge Exchange Bank* (Mo.), 24 Am. L. Reg. 399, and note; *Caskie* v. *Webster*, 2 Wall. Jr. 131; *Speed* v. *May*, 17 Penn. St. 91; *Means* v. *Hapgood*, 19 Pick. 105. See also, *Train* v. *Kendall*, 137 Mass. 366.

3. *Attachments by Residents of a Third State.*—After diligent search we believe that the principal case is the first clear decision upon the principle involved. In *Bentley* v. *Whittemore*, 19 N. J. Eq. 462, real estate in New Jersey was attached by residents of New Hampshire and Rhode Island, and claimed by the grantee of an assignee under a general assignment for the benefit of creditors in New York. The assignment contained preferences forbidden by the laws of New Jersey. The court said: "Upon what principle can a citizen of another state ask us to refuse to recognize the validity of an assignment made in the state of New York and in conformity to her laws? Upon what plea, consistent with comity, under such circumstances, are the authorities of this government to repudiate a transaction valid by the laws of a sister state? If the question touched one of our own citizens, we would vindicate our rejection of such transaction on the ground of our statute, passed legitimately for the special regulation of the affairs of such citizen. But if such a rejection relates to the citizens of another state, how is such a line of conduct to be justified? We might, indeed, urge as a sort of excuse, that the laws of New York regulating assignments were not similar to the laws of this state, and that we preferred the regulations of our own law. * * * But I cannot think we have a right to endeavor to arbitrate in such a concern."

But though the court seems to discuss the precise question of the principal case, it is to be observed that in the New Jersey case the real estate involved had been sold by the assignee before the attachment was levied, while there is a well defined distinction as regards cases where there has been an actual change of possession: *Howard Nat. Bank* v. *King*, 10 Abb. N. Cas. 346, and note to

Askew v. *La Cynge Bank*, 24 Am. L. Reg. 410.

In *Butler* v. *Wendell*, 57 Mich. 62, a New York assignment with preferences, which would have been invalid if made in Michigan, was declared superior to an attachment of personal property by an Illinois creditor.

In *Sanderson* v. *Bradford*, 10 N. H. 260, a Massachusetts assignment containing preferences invalid if made in New Hampshire, was upheld against an attachment of personal property by an English creditor.

In *Chafee* v. *Bank*, 71 Me. 514, the question was discussed, but in that case the attaching creditor had assented to the assignment by accepting a dividend under it. See also, *Receiver* v. *Bank of Plainfield*, 34 N. J. Eq. 450; *First Nat. Bank of Attleboro* v. *Hughes*, 10 Mo. App. 7; *Atwook* v. *Protection Ins. Co.*, 14 Conn. 555, overruled by 44 Conn. 196.

Upon a careful review of the authorities and the reasons supporting them, we incline to believe the doctrine of the principal case correct. To the reasoning in *Bentley* v. *Whittemore*, cited above, that of an early Missouri case seems an apt reply: "But admitting that our courts would be bound, upon principles of comity, to give effect to an assignment made in Pennsylvania as against creditors living in that state, upon what principle must the Pennsylvania law be administered here to a creditor who resides in Maryland? Why may he not insist on the *lex domicilia* with the same justice as the assignors who live in Philadelphia? The *lex loci contractus* can hardly apply in this case, inasmuch as the creditor suing never acceded to the terms of this assignment and was no party to the instrument; and the law of the domicile may as well be applicable to the contract on which he sues as the law of the interpleader's domicile to that contract on which they rely. The only reasonable and fair rule in a case of this character seems to be to administer the law of this state, the state in which the property lies, where the suit is brought, and whose laws are invoked for the protection of the rights of the respective parties:" *Brown* v. *Knox*, 6 Mo. 302; *Jenks* v. *Ludden*, 34 Minn. 482.

For a discussion of the attempted distinction between debts and movables, see note to *Askew* v. *La Cynge Bank*, 24 Am. L. Reg. 408.

CHAS. A. ROBBINS.

Lincoln, Neb.

Superior Court of Kentucky.

PULLMAN PALACE CAR COMPANY, APPELLANT, v. THOMAS G. GAYLORD, APPELLEE.

The Pullman Palace Car Company does not undertake to provide its cars with safes or other receptacles in which to deposit baggage, wearing apparel, money, jewelry, or other valuables (23 Am. Law Reg. N. S. 788), and hence is not liable for the loss of valuable jewelry stolen from a passenger, there being no other omission on the part of the company shown except the failure to provide such safe or other receptacle and a force to guard the car. The company is only bound to keep a reasonable watch over the plaintiff and his property.

APPEAL from Jefferson Common Pleas Court.

BOWDEN, J.—On a former appeal, prosecuted by the appellant,